

MAR 24 2008

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 5951
DATE COMPLAINT FILED: November 5, 2007
DATE OF NOTIFICATION: November 8, 2007
LAST RESPONSE RECEIVED: December 11, 2007
DATE ACTIVATED: January 18, 2008

EXPIRATION OF SOL: December 12, 2011

COMPLAINANT:

Ercell Hoffman

RESPONDENTS:

Californians for Change f/k/a Californians for
Obama and Kinde Durkee, in her official capacity
as treasurer
Emmett Cash III

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 432(e)(4)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)
2 U.S.C. § 441b(a)
2 U.S.C. § 441d(a)
2 U.S.C. § 441h(b)
11 C.F.R. § 110.1(h)
11 C.F.R. § 110.11(a)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter involves allegations that Californians for Change f/k/a Californians for
Obama ("CFO" or "Committee"), an unauthorized committee, misrepresented itself as being
affiliated with Presidential candidate Barack Obama and operated in a fraudulent manner.
Specifically, the complaint alleges that the Complainant paid \$2,423.76 to attend the CFO-

1 sponsored "Women of Power Cruise" and that the cruise was cancelled but her money has not yet
2 been refunded. A press article prior to the complaint quoted the Complainant: "It's called
3 Californians for Obama. ... I thought they were representatives of Obama." See Carla Marinucci,
4 *Fundraiser Cashes In – Obama Gets Zero*, San Francisco Chronicle, July 25, 2007. The
5 complaint alleges that respondents' actions constitute fraud.

6 CFO Chairman, Emmett Cash III ("Cash") filed a short response asserting that he, "along
7 with others formed the committee for the purpose of supporting Senator Obama and his run for
8 the Presidency" and that "[t]he committee operated under FEC rules."¹ Committee treasurer
9 Kinde Durkee responded through counsel that neither she nor her firm, Durkee and Associates,
10 LLC, had any responsibility or role in the Committee's fundraising solicitation or any
11 discretionary authority with respect to expenditures.

12 As set forth below, CFO's unauthorized use of a candidate's name, Californians for
13 *Obama*, and CFO's lack of a proper disclaimer on its website as to whether or not its activities
14 were authorized by a candidate, appear to constitute violations of the Federal Election Campaign
15 Act of 1971, as amended ("the Act"). See 2 U.S.C. §§ 432(e)(4) and 441d(a). Although the
16 Committee website includes a statement that CFO is an "Independent committee," the
17 aforementioned violations, taken together with other available information, suggest a possible
18 violation of the Act's prohibition on fraudulent solicitation. See 2 U.S.C. § 441h(b).

¹ The Marinucci article describes Cash's reported ventures in the past including serving as national chair of "Citizens for Powell," to draft Colin Powell for President, and as national coordinator for "Perot Voters," a group supporting the presidential campaign of Ross Perot. A committee titled "Citizens for Powell" registered with the Commission as an unauthorized single candidate committee in 1995 with an Ohio address, but never filed any disclosure reports and was administratively terminated by the Commission in 2000. California state records show that Cash registered "Citizens for Powell California Committee" in 1995 but no other information. We have not located any records of Perot Voters. Finally, our search of available public records has not revealed any criminal record on the part of Cash.

Accordingly, we recommend that the Commission make reason to believe findings in this matter and to authorize the use of compulsory process in order to investigate CFO and Cash.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Summary

Although the complaint and responses provide little information regarding respondents' activity, publicly available information such as CFO's website, the Committee's disclosure reports, and press reports provide a partial picture. CFO filed a Statement of Organization with the Commission on December 12, 2006, identifying itself as an unauthorized single candidate committee and identifying that candidate as Barack Obama.² CFO also launched a website, with a banner consisting of a picture of Sen. Obama and the words "Californians for Obama" in front of an American flag motif. See <http://www.californiansforobama.com>, included here at Attachment 1.³

CFO's website contains a "Contribute" page which states:

Contributions are not tax-deductible. Charges will appear as *Contributions* on your credit card statement. "Californians for Obama" is a Independent [sic] committee to elect Obama and is registered with the Federal Election Commission -
Emmett Cash, III

² The Commission's regulations define "single candidate committee" as a political committee other than a principal campaign committee which makes or receives contributions or makes expenditures on behalf of only one candidate. 11 C.F.R. § 100.5(e)(2).

³ The initial version of CFO's website described the Committee's intention to draft Sen. Obama as a presidential candidate. See <http://web.archive.org/web/20070209090319/http://www.californiansforobama.com>. The site was amended shortly thereafter to state that Sen. Obama had announced his intention to seek the 2008 Democratic nomination for President. See <http://web.archive.org/web/20070217101339/http://www.californiansforobama.com>. The website lists an extensive series of CFO activities: meetings in various parts of California, a "Women of Power Cruise," a fashion show, a telethon, and the formation of 25 occupation/profession-based committees with the goal of "formulat[ing] policies." See Attachment 1 at 1-3. It is unclear how many of CFO's advertised activities and events actually took place. For example, the January 30, 2007 meeting in Bakersfield, California is confirmed by a press article. See James Kotowski, *Meeting held for Obama supporters*, Bakersfield.com; January 30, 2007, available at <http://www.bakersfield.com/102/story/97249.html>. By contrast, the "Women of Power Cruise," scheduled for September 21-24, 2007, never took place.

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1 Attachment 1 at 4-5. This is the only disclaimer on CFO's website.⁴

2 Two other areas of CFO's website that solicit contributions are pages devoted to
3 "Campaign Memorabilia" and the "Women of Power Cruise." The "Campaign Memorabilia"
4 pages sell "Obama '08" and CFO bumper stickers, t-shirts and so forth. See Attachment 1 at 6-7.
5 The "Women of Power Cruise" is described as a three-day cruise providing an opportunity to
6 network "[w]ith over 2,000 energized women." *Id.* at 11. Nineteen "[i]nvited speakers and
7 panelists" are listed, including Eartha Kitt, U.S. Representative Diane Watson and Maya
8 Angelou. *Id.* The cruise reservation form offers several levels of accommodations, from
9 "Mate's 4" for \$400 to "Captain's Suite" for \$2,300, and instructs participants to "add Taxes and
10 Fees of \$123.76 to the total amount due (custom fees, government fees, immigration tax,
11 gratuities)."⁵ *Id.* at 12.

12 CFO also solicited contributions through its "Internet Telethon."⁶ The telethon, which
13 featured various entertainers, began with screen text "Emmett Cash III and New World Motion
14 Pictures Studios Presents..." and then a picture of Sen. Obama with his name, followed by an

⁴ Some earlier versions of CFO's website appear to contain the sentence about CFO being "Independent" at the end of the site's main page. See, e.g., <http://web.archive.org/web/20070217101339/http://www.californiansforobama.com>.

⁵ Neither the "Campaign Memorabilia" nor the "Women of Power Cruise" pages specify that payments to CFO are political contributions, although CFO disclosed as a contribution the receipt of Complainant's \$2,423.76 payment for the cruise. See 11 C.F.R. § 100.53 (the entire amount paid to attend a fundraiser or other political event and the entire amount paid as the purchase price for a fundraising item sold by a political committee is a contribution). In addition, no disclaimer is included on these pages of CFO's website. Instead, on the first "Women of Power Cruise" page, CFO lists its "Federal Election Commission ID# C0043892." See Attachment 1 at 11. CFO's actual FEC committee ID is C00436892, which appears elsewhere on CFO's website. See *id.* at 3.

⁶ According to CFO's website, the telethon was to take place on March 25, 2007. See Attachment 1 at 1. According to the text at the start of a video of the telethon, the telethon was "broadcast" on March 29 and April 1, 2007. The video may be viewed at <http://web.archive.org/web/20070401093323/http://www.californiansforobama.com>.

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1 overlay of text, "Californians for Obama ... the first Internet 'Telethon.'" ⁷ When the first
2 speaker welcomes viewers to "the presidential election campaign telethon for Barack Obama," a
3 banner contains a similar picture of Sen. Obama along with the phrase "Obama 08." Cash
4 introduces himself as "State Chairman for Californians for Obama" and states that he has
5 "accepted this position very gladly" in light of Sen. Obama's positive qualities. Speakers
6 including Cash repeatedly ask viewers to go to CFO's website to contribute up to \$2,300:

- 7 ▪ "[S]o you will be able to participate and give generously because this is such a
8 monumental event 08 Obama 08" [sic];
- 9
- 10 ▪ "You can play a major role in making sure Barack Obama becomes President in 2008.
11 Just by your minor contribution one dollar, five, ten, one thousand it matters not what
12 you send Go to www.californiansforobama.com right now;"
- 13
- 14 ▪ "[S]end what you can; the success of the campaign is in your hands;"
- 15
- 16 ▪ "Obama is a great candidate and he can't make it unless we get your support;"
- 17
- 18 ▪ Viewers' "help and support" is asked for, including "walking our precincts, passing
19 out literature, helping to address envelopes;"
- 20
- 21 ▪ "[I]f you can't make a contribution, you can go to the campaign office and volunteer";
22 and
- 23
- 24 ▪ "The primary is in February next year; we are going to need millions of dollars to
25 make a difference."
- 26

27 A window into CFO's activities is also possible through its disclosure reports. In

28 July 2007, CFO filed a Mid Year Report disclosing receipts of \$9,683.37⁸ and disbursements of
29 \$8,147.30. None of CFO's spending is in the form of contributions or independent expenditures

⁷ Emmett Cash III is president of New World Motion Picture Studios, a California corporation whose status is "suspended" according to the California Secretary of State website.

⁸ This entire amount was in the form of contributions except for a \$100.00 loan from the Committee treasurer, Kinde Durkee.

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1 in support of Sen. Obama. By far the largest recipient of CFO payments was Cash, who received
2 a total of \$3,155.04, mostly for "gas" and "salary." CFO also disclosed payments totaling
3 \$887.23 to Durkee & Associates, the firm of Committee treasurer Kinde Durkee, for
4 "Accounting," and payments apparently related to fundraising, such as \$336.75 to Precision of
5 Iowa, a telemarketing firm, for "fundraising fee," and \$511.00 to the U.S. Postal Service for
6 postage and stamps. These latter two disbursements suggest that CFO conducted telemarketing
7 and direct mail; Cash confirmed the direct mail activity in press accounts. *See infra.* The
8 Committee later disclosed a \$480.00 independent expenditure in support of Barack Obama on
9 July 13, 2007, its sole disbursement in support of the candidate.

10 Shortly after the Committee filed its 2007 Mid Year Report, press accounts reported:

- 11 ■ Sen. Obama's presidential campaign asked CFO to close operations;
- 12
- 13 ■ Several celebrities advertised as attending CFO's "Women of Power Cruise" had never been
14 contacted in connection with attending the event;
- 15
- 16 ■ Cash asserted that he never claimed his efforts were official or beneficial to Sen. Obama's
17 campaign, and that his web site and literature specify that CFO is an independent committee;
18 and
- 19
- 20 ■ Cash acknowledged that none of CFO's money went directly to Sen. Obama's official
21 campaign, but asserted that he contributed to Sen. Obama's presidential campaign by urging
22 contributors to write checks, by sending out mail advertisements, and helping to push for
23 voter registration.
- 24
- 25 ■ Cash is quoted that his only aim was "to raise money to cover the expenses of what [we're]
26 doing ... it does take a little bit to run up and down the state and to carry people with you."
27 CFO, according to Cash, had only one goal: "We want a part of this great man, too."
- 28

29 See Carla Marinucci, *Fundraiser Cashes In – Obama Gets Zero*, San Francisco Chronicle,

30 July 25, 2007. Attachment 2.

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1 Shortly after this press attention, and the request from the Obama campaign, the
2 Committee changed its name to Californians for Change and largely suspended operations.⁹

3 On August 10, 2007, Cash wrote to the Complainant regarding the cancellation of the
4 "Women of Power Cruise," stating that the Complainant's \$2,423.76 paid toward the event "will
5 be returned within a short period of time." Several weeks later, by letter dated September 25,
6 2007, the Complainant asked Cash for a refund of her money. On the Committee's 2007 Year
7 End Report, it disclosed a debt of \$2,423.76 to Complainant for the refund of her contribution
8 along with refund debts to three other contributors in the amount of \$100 each.¹⁰

9 B. Legal Analysis

10 1. Use of a candidate's name

11 The Act prohibits the use of a candidate's name in the name of an unauthorized
12 committee. 2 U.S.C. § 432(e)(4). CFO, an unauthorized committee, used the name of a
13 candidate, Barack Obama, in its name in conducting most of the activity at issue in this matter,¹¹

⁹ On August 9, 2007, CFO amended its Statement of Organization to change its name to Californians for Change and identify itself as a committee supporting/opposing more than one Federal candidate. The Committee disclosed total 2007 receipts of \$10,583.76 and disbursements of \$10,517.44. The Committee's \$480.00 independent expenditure in support of Barack Obama, its only spending on independent expenditures or contributions, represented only 4.6% of the Committee's overall spending.

¹⁰ The Committee also disclosed a debt of \$6,430.97 to Durkee & Associates for "Accounting Services." The Committee's receipts consisted of a single \$500 contribution and a \$400 loan from Cash. The Committee's disbursements of \$2,370.14 included \$401.29 to Emmett Cash III for gas and food, \$345.44 to various vendors for gas and food, \$525.30 for telephone, \$155.37 for website design, and five contribution refunds of \$160.00 each.

¹¹ For example, according to its disclosure reports, the Committee received \$9,683.76 of its overall \$10,583.76 receipts (91%), and made \$0,001.72 of its overall \$10,517.44 disbursements (92%) under the name CFO prior to changing its name to Californians for Change.

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1 and none of the exceptions set forth in 11 C.F.R. § 102.14(b) apply.¹² Accordingly, we
2 recommend that the Commission find reason to believe that Californians for Change f/k/a
3 Californians for Obama and Kinde Durkee, in her official capacity as treasurer, violated 2 U.S.C.
4 § 432(e)(4).

5 **2. Lack of proper disclaimer**

6 The Act requires political committee communications to contain disclaimers. 2 U.S.C.
7 § 441d(a). The disclaimer requirements apply to all Internet websites of political committees
8 available to the general public. See 11 C.F.R. § 110.11(a)(1). Accordingly, committee websites,
9 if not authorized by a candidate, shall clearly state the name and permanent street address,
10 telephone number or World Wide Web address of the person who paid for the communication
11 and state that the communication is not authorized by any candidate or candidate's committee.
12 2 U.S.C. § 441d(a)(3); 11 C.F.R. § 110.11(b)(3).

13 The CFO website contains no disclaimer except on the "Contribute" page, where it states
14 in relevant part "'Californians for Obama' is a Independent [sic] committee to elect Obama and
15 is registered with the Federal Election Commission." See Attachment 1 at 5. This disclaimer
16 fails to state whether the website is authorized by a candidate and fails to state who paid for the
17 website. See 2 U.S.C. § 441d(a)(3). Accordingly, we recommend that the Commission find
18 reason to believe that Californians for Change f/k/a Californians for Obama and Kinde Durkee,
19 in her official capacity as treasurer, violated 2 U.S.C. § 441d(a).

¹² These exceptions apply to 1) delegate committees, 2) draft committees if the committee's name clearly indicates that it is a draft committee, and 3) special projects and other communications of unauthorized committees if the title clearly and unambiguously shows opposition to the named candidate. 11 C.F.R. § 102.14(b)(1) - (3). Although CFO's website initially described the Committee as a draft committee, CFO failed to specify in its name that it was a draft committee. See *id.* at 102.14(b)(2). In any event, according to CFO's own website, on February 10, 2007, Sen. Obama declared his intention to seek the Democratic nomination for the 2008 presidential election, so any possible "draft committee" status on the part of CFO was mooted early in CFO's existence.

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3. Fraudulent solicitation

The unauthorized use of a candidate's name and the lack of proper disclaimers are also relevant in the consideration of whether the Committee and Cash fraudulently misrepresented themselves as acting on behalf of Sen. Obama for the purpose of soliciting contributions. See 2 U.S.C. § 441h(b). As set forth below, we believe that the available information warrants a finding of reason to believe in this matter.

Section 441h(b) provides that no person shall (1) fraudulently misrepresent the person as speaking, writing, or otherwise acting for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations; or (2) willfully and knowingly participate in or conspire to participate in any plan, scheme or design to violate paragraph (1). See also 11 C.F.R. § 110.16.¹³

¹³ Section 441h(b) was added to the Act by the Bipartisan Campaign Reform Act of 2002 ("BCRA") and was intended to address the Commission's inability under the pre-BCRA statute to pursue enforcement actions against persons and organizations not associated with a candidate who engage in fraudulent solicitation of funds. See 2 U.S.C. § 441h (2000); *Explanation and Justification of 11 C.F.R. § 110.16*, 67 Fed. Reg. 76,962, 76,969 (Dec. 13, 2002). In enacting section 441h(b), Congress cited the Commission's inability under then-section 441h to take action against organizations fraudulently soliciting funds by posing as political committees or candidates:

[T]he Federal Election Commission reports receiving a number of complaints that people have fraudulently raised donations by posing as political committees or candidates and that the current law does not allow the Commission to pursue such cases....

Clearly, one can see the potential for harm to citizens who are targeted in such fraudulent schemes. Unfortunately, the Federal Election Campaign Act does not grant specific authority to the Federal Election Commission to investigate this type of activity, nor does it specifically prohibit persons from fraudulently soliciting contributions. The FEC has asked Congress to remedy this, and the amendment I offer today is in response to this request. This amendment makes it illegal to fraudulently misrepresent any candidate or political party or party employee in soliciting contributions or donations.

147 Cong. Rec. 5055 (2001) (Statement of Sen. Nelson). The limited legislative history of section 441h(b) indicates that Congress intended the prohibition on fraudulent solicitation to apply to any entity that fraudulently raises donations by posing as a political committee or candidate, or participates in a scheme intended to fraudulently raise donations by posing as a political committee or candidate. See *id.* See also *Federal Election Commission Annual Reports* for 2001 at 39 and for 1999 at 47-48 (recommending that Congress amend section 441h to prohibit fraudulent solicitation because contributions that people believed were going for the benefit of the candidate were diverted for other purposes, harming both the candidates and the contributors).

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1 To violate section 441h, the Act requires that the violator had the intent to deceive, but
2 does not require that the violator sustain all elements of common law fraud. "Unlike common
3 law fraudulent misrepresentation, section 441h gives rise to no tort action..." and therefore, proof
4 of justifiable reliance and damages is not necessary. *See Explanation and Justification of*
5 *11 C.F.R. § 110.16*, 67 Fed. Reg. 76,962, 76,969 (Dec. 13, 2002); *Neder v. United States*, 527
6 U.S. 1, 24-25 (1999) (citing *United States v. Stewart*, 872 F.2d 957, 960 (10th Cir. 1989)).
7 Further, courts have held that even absent an express misrepresentation, a scheme devised with
8 the intent to defraud is still fraud if it was reasonably calculated to deceive persons of ordinary
9 prudence and comprehension. *See United States v. Thomas*, 377 F.3d 232, 241-43 (2d Cir.
10 2004), citing *Silverman v. United States*, 213 F.2d 405 (5th Cir. 1954).

11 Although one portion of the website characterizes CFO as an "Independent" committee,
12 and its FEC disclosure reporting indicates that it is an unauthorized committee, the totality of
13 circumstances suggests that CFO and Cash represented the Committee in a manner that would
14 lead a reasonable person to think that they were soliciting contributions on behalf of Sen. Obama.
15 CFO's use of the name "Obama" in its name is not by itself dispositive, but taken together with
16 other factors discussed below, the use of "Obama" in the Committee's name likely led reasonable
17 people to believe that CFO was acting on behalf of Sen. Obama:¹⁴

- 18 ■ The use of the candidate's picture and the phrase "Obama '08" without a proper
19 disclaimer that CFO was not authorized by any candidate;
- 20
- 21 ■ Complainant's reported remark, "It's called Californians for Obama. ... I thought they
22 were representatives of Obama";

¹⁴ Compare MUR 5951 with MUR 5889 (Republican for Trauner), a recent case in which an unauthorized committee impermissibly used the name of a candidate in its name and failed to state in advertisement disclaimers whether they were authorized by any candidate, where we did not recommend, and the Commission did not find, reason to believe that respondents violated section 441h(b). In that matter, Trauner was the *Democratic* candidate in the election; thus, potential contributors were unlikely to think they were contributing to Trauner's authorized committee.

- The solicitation of contributions using phrases such as "the success of the campaign is in your hands" and "he can't make it unless we get your support," implying that the contributor is giving to Sen. Obama's campaign;
- CFO's telethon is introduced as "the presidential election campaign telethon for Barack Obama";
- Cash's statement that he "accepted th[e] position" of State Chairman of CFO, implying that he was asked to do so, presumably by Sen. Obama or his agents;
- The scale and scope of CFO's advertised activities, such as needing "millions of dollars to make a difference" regarding the primary election, forming 25 statewide groups to formulate policies, asking for help in "walking our precincts, passing out literature," and the mention of a "campaign office," suggests an official statewide candidate campaign;
- The sale of "Campaign Memorabilia" including "Obama '08" items; and
- The solicitation of contributions up to a maximum of \$2,300, which is the 2008 election cycle limit on contributions to authorized candidate committees, *see* 2 U.S.C. § 441a(a)(1)(A), making no mention of the aggregation of contributions to CFO and contributions to Sen. Obama's authorized presidential committee pursuant to 11 C.F.R. § 110.1(h).

Whether or not these statements and actions rise to the level of express misrepresentation, we believe they were reasonably calculated to deceive persons of ordinary prudence and comprehension and so they appear to satisfy the fraudulent solicitation standard in section 441h(b). *See United States v. Thomas*, 377 F.3d at 241-43. The circumstances in this matter broadly resemble those in MUR 5472 (Republican Victory Committee ("RVC")), where respondents solicited contributions that when taken in context implied that RVC was affiliated with or acting on behalf of the Republican Party, when in fact RVC had no such connection.¹⁵ In finding reason to believe that MUR 5472 respondents violated 2 U.S.C. § 441h(b), the

¹⁵ RVC, like CFO, registered with the Commission as a political committee in a manner not inconsistent with its actual identity: RVC indicated on its Statement of Organization that it was not a party committee, and CFO registered with the Commission as an unauthorized committee. Unlike CFO, however, RVC did not file disclosure reports with the Commission.

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Commission cited as a key factor RVC's use of the name "Republican."¹⁶ See MUR 5472 RVC Factual and Legal Analysis at 4-5.

In sum, as the available information suggests that CFO and Cash may have fraudulently misrepresented themselves as acting on behalf of Sen. Obama for the purpose of soliciting contributions, we recommend that the Commission find reason to believe that Emmett Cash III and Californians for Change f/k/a Californians for Obama and Kinde Durkee, in her official capacity as treasurer, violated 2 U.S.C. § 441h(b) by willfully and knowingly participating in, or conspiring to participate in, a plan, scheme or design to engage in fraudulent solicitation.¹⁷

4. Excessive contribution and corporate contributions

During the 2008 election cycle, the contribution limit for a person giving to a single candidate committee is \$2,300 per election, and no committee shall knowingly accept any contribution in violation of this limit. See 2 U.S.C. §§ 441a(a)(1)(A) and 441a(f). This limit applies to aggregate contributions to CFO and to Obama for America, Barack Obama's principal campaign committee. See 11 C.F.R. § 110.1(h)(1);¹⁸ MUR 5889 (Republicans for Trauner)

¹⁶ The available information regarding fraudulent solicitation in MUR 5951 differs from some of the other section 441h(b) cases where the entities were completely fictitious and the persons responsible hid their identities. See, e.g., MUR 5384 (Never Stop Dreaming) (individuals misrepresented the entity as acting on behalf of Gephardt for President in connection with the planning of a fundraiser for the purpose of soliciting funds), MUR 5385 (Groundswell PAC) ("PAC" that was not a registered committee and not authorized by Gephardt Committee mailed a fundraising letter asking for contributions that would be used for grassroots efforts to help Gephardt win the Democratic nomination and the Presidency), and MUR 5443 (www.johnkerry-2008.com) (website fraudulently solicited contributions by passing itself off as a website authorized by John Kerry for President, Inc.).

¹⁷ The Commission has emphasized its intention to enforce the Act's prohibition on fraudulent misrepresentation. In MUR 5089 (Tuchman), a four-Commissioner Statement of Reasons ("SOR") noted that "§ 441h violations are among the most egregious transgressions of our Act." MUR 5089 SOR at 2. This SOR was "intend[ed] to put the regulated community on notice that allegations concerning § 441h violations will be taken very seriously and they will be a top Commission enforcement priority." *Id.* at 3.

¹⁸ See also *Explanation and Justification of 11 C.F.R. § 110.1(h)*, 52 Fed. Reg. 765 (January 9, 1987); FBC Campaign Guide for Nonconnected Committees at 14.

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(contributions to Republicans for Trauner were aggregated with donors' contributions to Trauner's principal campaign committee, Trauner for Congress).

CFO disclosed a \$2,423.76 contribution from Complainant Ercell Hoffman, an amount in excess of the applicable \$2,300 contribution limit.¹⁹ See 2 U.S.C. §§ 441a(a)(1)(A) and 441a(f). As noted, the Committee listed the refund of Hoffman's entire contribution as a debt on its 2007 Year End Report. The Committee was obligated to correct the excessive portion, such as by refund to the contributor, within 60 days of the contribution date of June 4, 2007, and this such correction is long overdue. See 11 C.F.R. § 103.3(b)(3). However, in view of the small size of Hoffman's excessive contribution (\$123.76), we make no recommendations regarding this issue.

The Act also prohibits the making and knowing receipt of corporate contributions. See 2 U.S.C. § 441b(a). The available information suggests that two corporations may have made contributions to CFO in connection with its "Internet Telethon." A telethon speaker states that the telethon is "brought to you by NWMPS (New World Motion Picture Studio) and Californians for Obama 2008." CFO's website describes the telethon as produced in Los Angeles and "seen state[wide] via the NWMPS Urban Network Satellite on the Internet" and that "NWMPS will arrange to have its cameras and all the necessary equipment and staff needed for the telethon." See Attachment 1 at 1. CFO's website further describes the telethon as an eight-hour production taking place at Glendale Studios Television in Glendale, California. See *id.*

New World Motion Picture Studios and Glendale Studios, Inc. are both California corporations. The implication here is that NWMPS and Glendale Studios, Inc. may have made contributions to CFO in connection with the telethon, and that the Committee knowingly

¹⁹ Obama for America has not itemized any contribution from Hoffman.

1 received the contributions. See 2 U.S.C. § 441b(a). CFO did not disclose any payment or debt to
2 NWMPs or Glendale Studios, Inc. In view of the limited information, however, we do not make
3 any recommendations regarding any possible violations of section 441b(a) at this time.²⁰ The
4 proposed investigation in this matter would include an examination of the circumstances of the
5 telethon, which may then be the subject of future recommendations to the Commission.

6 **III. INVESTIGATION**

7 This matter will require an investigation in order to ascertain the full extent of the
8 Committee's and Cash's activity, including any direct mail and telephone solicitations and other
9 representations that Cash and others made regarding the Committee.

10 _____ This information would
11 be significant in assessing the possible section 441h(b) violations in this matter. In view of the
12 seriousness of possible section 441h(b) violations, we would send subpoenas to the Committee
13 and Cash upon the Commission's findings of reason to believe.

14 **IV. RECOMMENDATIONS**

- 15 1. Find reason to believe that Californians for Change f/k/a Californians for Obama
16 and Kinde Durkee, in her official capacity as treasurer, violated 2 U.S.C.
17 §§ 432(e)(4) and 441d(a).
18
19 2. Find reason to believe that Californians for Change f/k/a Californians for Obama
20 and Kinde Durkee, in her official capacity as treasurer, violated 2 U.S.C.
21 § 441h(b) by willfully and knowingly participating in, or conspiring to participate
22 in, a plan, scheme or design to engage in fraudulent solicitation.
23
24 3. Find reason to believe that Emmett Cash III violated 2 U.S.C. § 441h(b) by
25 willfully and knowingly participating in, or conspiring to participate in, a plan,
26 scheme or design to engage in fraudulent solicitation.

²⁰ If CFO knowingly received corporate contributions, the Committee's failure to disclose the receipt of such contributions would result in reporting violations as well. See 2 U.S.C. § 434(b)(3)(A); MUR 5645 (America's Foundation) (Commission conciliated with committee on violations of section 441b(a) for the receipt of in-kind corporate contributions and section 434(b)(3)(A) for the failure to report such contributions).

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4. Authorize the use of compulsory process.
5. Approve the attached Factual and Legal Analyses.
6. Approve the appropriate letters.

Thomasenia P. Duncan
General Counsel

March 21, 2008

Date

BY:

Mark D. Shonkwiler by MA

Mark D. Shonkwiler
Acting Deputy Associate General Counsel
for Enforcement

Mark Allen

Mark Allen
Acting Assistant General Counsel

Attachments:

1. Californians for Obama website
2. Carla Marinucci, *Fundraiser Cashes In – Obama Gets Zero*, SAN FRANCISCO CHRONICLE, July 25, 2007

12044312426

Californians for Obama

Events

Women of Power Cruise

Share a 3-Day Cruise with Powerful & Power-filled Women.

Friday September 21, 2007 to Monday, September 24, 2007

[Click here for more information.](#)

[Click here to download the registration form \(PDF\).](#)

Obama "California High Tea"

This event has been postponed.

Fashion Show

Californians for Obama Fashion Show will tour four cities Oakland, San Diego, Los Angeles and Riverside California. Famous Fashion Designers will lead their fashions to be modeled by Hollywood personalities and others.

"Californians for Obama" Telethon

The telethon will be produced in Los Angeles and will be seen state via the NVA/PS Urban Network Satellite on the Internet. NVA/PS will arrange to have its cameras and all the necessary equipment and staff needed for the telethon. The Hollywood community and stars will participate in the eight-hour production, which will take place on Sunday March 25, 2007 at 2:00 p.m. at Glendale Studios Television, 1239 South Glendale Avenue, Glendale, California 91205.

Participating Committees by Occupation and Professions

Committees will be organized by occupation, each with a Chairman and Advisory Group. The goal is to have each committee formulate policies and make recommendations in their areas of expertise. For example: Doctors, Teachers, Accountants, Contractors and so on. There will be 25 such groups.

Participating Committees by Occupation and Professions Chairmen Elections

Callifornians for Obama election of Chairpersons are due on or before February 22, 2007. Installation of chairperson will take place on Sunday March 4, 2007 at 3:00 p.m. during the Obama "Callifornia High Tea" at the home of Dolores and Ben Kerr, 817 Kensington Ave., Hancock Park, Los Angeles.

Occupation and Professions Chairpersons Meeting

Callifornians for Obama Committee Chairpersons meeting will take place in Los Angeles March 24 and 25 1:00 p.m. in Los Angeles during the "Callifornians for Obama" Telethon. Policy recommendation will be discussed.

Occupation and Professions Committee Conference

Occupation and Professions Committee Conference will take place June 15 -17, 2007 in Los Angeles at South West College. The committee as a body will consider and vote on all recommendation. All committee members may attend register and vote.

Occupation and Professions Committee Printing

Printing of recommendations August 2007.

News

February 16th, 2007 - Sen. Obama Announces He Will Seek 2008 Democratic Nominations For President.

Upcoming Events

Area: Los Angeles

Date: January 24, 2007

Time: 7:00 p.m.

Larry Hernandez Coffeshouse

3351 West 43rd St.

Los Angeles, CA 90008

323-292-1336

Area: Riverside

Date: January 26, 2007

Time: 7:00 p.m.

Black Voices News

<http://www.calliforniaforobama.com/news.php?G=7372422885&G=29>

820713170071

Callahan for Obama

1590 Waterman Ave.
Riverside, CA 92404
909-888-5040

Area: San Diego
Date: January 28, 2007
Time: 4:30 p.m.
Location: TBA

Area: Bakersfield
Date: January 30, 2007
Time: 7:00 p.m.

Masonic Building
410 East California Ave.
Bakersfield, CA 93301

Area: Oakland/San Francisco Bay Area
Date: February 9, 2007
Time: 7:00 p.m.

The Black Repertory Theater
3201 Adeline St.
Berkeley, CA 94703
510-652-2120

[REDACTED]

12044312430



Contribute

Thank you for your contribution!

Name:

Address:

City:

State:

Zip:

Occupation:

Employer:

Contribution Amount:

Credit Card Information:

Name on Card:

Expiration Date

Credit Card Number:

Credit Card Type:

Address (Billing, if different):

City, State Zip (Billing, if different):

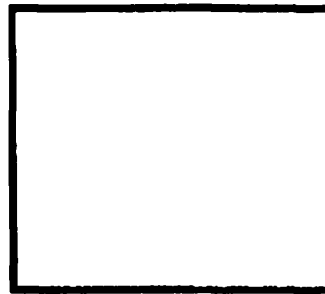
Phone:

Fax:

eMail:

Online Contribution

Comments:



Contributions are not tax-deductible. Charges will appear as *Contributions* on your credit card statement.
"Californians for Obama" is a Independent committee to elect Obama and is registered with the Federal Election
Commission - Emmett Cash, III



12044312431

Californians For Obama

Campaign Memorabilia For Sale

To browse available official Californians For Obama Memorabilia such as Shirts, Caps, Mugs, and Bumper Stickers, please download the Order Form below in either MS Word or PDF format.

[Order Form in MS Word Format](#)
[Order Form in PDF Format](#)

Ordering Instructions:

1. Download an Order Form from the links above.
2. Complete the form and calculate your totals
3. Fill out your shipping address and payment option
4. Print and Send the form to:

Ernest Cash, III
Care Of: Californians For Obama
P.O. Box 470586
Los Angeles, CA 90047

Please allow 2 weeks for order processing and shipping.

News

February 16th, 2007 - Sen. Obama Announces He Will Seek 2008 Democratic Nomination For President.

Upcoming Events

Area: Los Angeles
Date: January 24, 2007

<http://www.californiansforobama.com/news/2007/01/24/07022007-2007-01-24>

25421544021

"Californians for Obama" - Campaign Memorabilia Items

✓	Item	Slogan	Size	Price	Nbr. Ordered	Shipping*	Total
	Bumper Sticker	Californians for Obama		\$ 3.00		\$0.00	
	Bumper Sticker	OBAMA - 08		\$ 3.00		\$0.00	
	Bumper Sticker	Californians for Obama		\$25.00	10	\$0.00	
	Bumper Sticker	OBAMA - 08		\$25.00	10	\$0.00	
	Cap	OBAMA - 08		\$10.00		\$2.00	
	T-Shirt (white)	Californians for Obama	<input type="checkbox"/> M <input type="checkbox"/> L <input type="checkbox"/> XL <input type="checkbox"/> XXL	\$15.00		\$3.00	
	T-Shirt (white)	Californians for Obama	XXL	\$19.00		\$3.00	
	T-Shirt (white)	OBAMA - 08	<input type="checkbox"/> M <input type="checkbox"/> L <input type="checkbox"/> XL <input type="checkbox"/> XXL	\$15.00		\$3.00	
	T-Shirt (white)	OBAMA - 08	XXL	\$19.00		\$3.00	
	Sweat Shirt (white)	OBAMA - 08	<input type="checkbox"/> M <input type="checkbox"/> L <input type="checkbox"/> XL <input type="checkbox"/> XXL	\$22.00		\$4.00	
	Sweat Shirt (White)	OBAMA - 08	XXL	\$27.00		\$4.00	
	Mug (set of 4)	OBAMA - 08	Assorted Colors	\$25.00		\$4.00 a set	
SUB-TOTAL							
SALES TAX							
FINAL TOTAL							

*Add shipping in the United States for each item

Please send the items ordered to (allow two weeks for shipping):

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone: _____ E-mail: _____

Payment Type: ☐ credit card ☐ check ☐ cash ☐ money order ☐ purchase order

Credit card: ☐ American Express ☐ MasterCard ☐ Visa

Card Number: _____ Exp. Date: _____

Name on Card: _____

Signature: _____

Date Ordered: _____

For Office Use Only:

Order Number: _____

Date Received: _____

Audited By: _____

Californians for Obama

Volunteer

Name:

Address:

City:

State:

Zip:

Telephone (Day):

Telephone (Evening):

Fax:

Email:

Have you worked on a political campaign before: Yes ☐ No ☐

If you answered yes, in what capacity did you work?

In what capacity would you like to work on this campaign?



Will you be able to attend meetings in your area? Yes ☐ No ☐

If you would like to volunteer to work as a County Chairperson please send a resume to
Californians For Obama, P.O. Box 470586, Los Angeles, California 90047 or e-mail your resume to: volunteers@CaliforniansforObama.com.

We look forward to working with you to achieve our goal - Draft Barack Obama for President of the USA.

Brunett Cash, III
State Coordinator
Californians For Obama



News

February 16th, 2007 - Sen. Obama Announces He Will Seek 2008 Democratic Nomination For President.

Upcoming Events

Area: Los Angeles
Date: January 24, 2007
Time: 7:00 p.m.

Lacy Florence Conference
3351 West 43rd St.
Los Angeles, CA 90008
323-293-1356

Area: Riverside
Date: January 26, 2007
Time: 7:00 p.m.

Black Voice News
1590 Western Ave.
Riverside, CA 92404
909-888-5040

Californians for Obama

Volunteer

To receive the latest news about the California For Obama campaign, please join our mailing list by entering your name and email below. You will receive our eNewsletters notifying you of upcoming events, news, and how you can help with the campaign.

Name:

Email:

News

February 16th, 2007 - Sen. Obama Announces He Will Seek 2008 Democratic Nomination For President.

Upcoming Events

Area: Los Angeles

Date: January 24, 2007

Time: 7:00 p.m.

Lacy Florence Coffeehouse

3351 West 43rd St.

Los Angeles, CA 90008

323-293-1356

Area: Riverside

Log On to the California For Obama Website at <http://www.californiansforobama.com> or call (877) 202-2028 8AM-6PM AMT

95071507021

Californians For Obama



For information contact:
Scottie Gray, Cruise Coordinator
323-964-1111

Share a 3-Day Cruise with
Powerful & Power-filled Women
Friday, September 21, 2007 to Monday, September 24, 2007
Long Beach - 5:00 pm Long Beach - 8:00 am

Relaxation!! Information!! Interaction!!

Network: With over 2,000 energized women

Enjoy: Carnival Cruise Ship amenities—Great Food • Spa • Pool • Shows

Enjoy: Step Contest • Talent Show

Shop: Paradise Cruise • Ship Mall
“Women of Power” Mall

Attend: Panels & Workshops

Style: Greek Pan-Hellenic Grand Ball

Tour: Ensenada, Mexico

Receive: FREE Gifts!!

For more information contact:
Scottie Gray, Cruise Coordinator
323-964-1111
www.CaliforniansforObama.com

Invited Speakers and panelists'...

- ✓ Martha Kist—Entertainment
- ✓ Barbara Walker—Business
- ✓ Kathy Hughes—Business
- ✓ Queen Minerva Alvarez—Business Motivation
- ✓ Hon. Diane Watson—Government
- ✓ Sarah Lee Ralph—Business
- ✓ Susan Taylor—Business/Motivation
- ✓ Silvia Turner—Spa Motivation
- ✓ Hon. Jeanette Nollins—Government
- ✓ Corrie Johnson—Philanthropy
- ✓ Maya Angelou—Entertainment/Motivation
- ✓ Cathy Tyson—Entertainment
- ✓ Jacqui Stevens—Communication
- ✓ Pat Harvey—Communication Business
- ✓ Dr. Rosie Milligan—Business/Motivation
- ✓ Laura Diaz—Communication
- ✓ Hon. Amira Salim Ali—Government
- ✓ Judith Turner—Spa Motivation
- ✓ Norma Thompson Hollis—Motivation

Californians For Obama

Women of Power Cruise

For information contact:
Scottie Gray, Cruise Coordinator
323-964-1111

WOP Cruise Reservation Form

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone: _____

E-mail: _____

Payment Type: Deposit: ☐ \$100 Full*: ☐ \$_____ Partial*: ☐ \$_____

Women of Power Mall Merchant**: ☐ \$_____

Payment Method: ☐ credit card ☐ check ☐ cash ☐ money order ☐ purchase order

Credit card: ☐ American Express ☐ MasterCard ☐ Visa

Card Number: _____ Exp. Date: _____

Name on Card: _____

Signature: _____

*add Taxes and Fees of \$123.76 to the total amount due (custom fees, government fees, immigration tax, gratuities)

*Final payment is due by Monday, July 23, 2007.

Call Duro Travel Services, Inc. at 866-978-4467 to make a credit card payment by telephone.

For questions and information contact:
Scottie Gray, Cruise Coordinator
323-964-1111



Need airfare, train, or bus tickets contact
Duro Travel Services, Inc.
866-978-4467 or
duroworldwidetravel@yahoo.com

Share the Power Weekend*

☐ Captain's Suite - \$2,300.

(up to 2 occupants)

☐ Mate's 2 - \$800.

(double occupancy)

☐ Mate's 3 - \$600.

(double occupancy)

☐ Mate's 4 - \$400.

(double occupancy)

☐ Women of Power Mall
Merchant - \$1,500.**

*Captain's & Mate's payment plan:
Payment in Full or \$100 deposit with
agreement for monthly authorized
equal payments via credit card. Add
taxes/fees of \$123.76 to the cost of
the cruise.

*Captains receive privileges as Cruise
Sponsors including a listing in Cruise
Souvenir Book and priority seating at
all events

**Merchant's space: 8ft dressed table
with 2 chairs.

**You MUST Travel With A
Valid Passport on this Cruise.**

Reserve your Berth Now
with a \$100 deposit (non-refundable).
Final and full payment due by July 31, 2007

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San Francisco Chronicle

FUNDRAISER CASHES IN – OBAMA GETS ZERO

Real presidential campaign warns unauthorized effort in state to cease

Carla Marinucci, Chronicle Political Writer

Wednesday, July 25, 2007

SHARE COMMENTS (11)

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The state chairman of the "Californians for Obama" campaign has raised thousands of dollars in donations through promotions ranging from celebrity-studded Mexican cruises to CD sales to campaign office "grand openings" in support of the popular Illinois Democratic senator and presidential candidate.

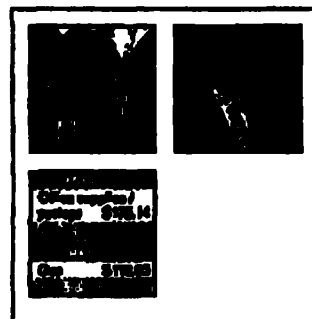
But the official presidential campaign of Barack Obama said Tuesday it was unaware of the activities of the entirely unauthorized Los Angeles-based fundraising efforts of Emmett Cash III -- a self-proclaimed former movie mogul who was a registered Republican until last month.

Obama campaign spokesman Bill Burton, after being informed by The Chronicle of Cash's fundraising activities, said the senator's camp Tuesday issued a stern warning "asking him to close operations."

Cash, a week after he earned media coverage and addressed supporters at a "Californians for Obama" campaign office opening in San Bernardino, insists he has done nothing illegal.

But critics say his independent efforts to parlay Obama's presidential drive into a fundraising bonanza illustrates an increasingly disturbing trend in political campaigns of the Internet age -- the proliferation of entrepreneurs who use technology to scoop up voter donations without official campaign sanction.

Cash's "Californians for Obama" boasted an official-looking Web site (www.californiansforobama.com) that was graced by a smiling photo of the candidate. The site pitched a star-studded Obama "Women of Power" cruise for 2,000 to Mexico that attracted donors like a 65-year-old woman from Compton (Los Angeles County), who said she has paid the \$2,423 cruise fee believing the funds would help support her candidate.



But a Chronicle examination of the latest Federal Election Commission records on file for the organization for the reporting period ending June 30 shows that while Cash has raised nearly \$80,000 this year, not one dollar has gone to the Obama campaign -- or any other political candidate.

Indeed, nearly two thirds of the group's 2007 funding has already been paid out either to Cash himself -- for listed expenses such as salary and travel and snacks -- or to his organization's accounting firm, Burbank-based Durkee & Associates. Other expenses include U.S. postage and signs, the records show.

Cash, reached Tuesday by phone at his Southern California offices, said he has never claimed his efforts are official or beneficial to the Illinois senator's campaign. The businessman -- who has described himself in past newspaper reports as the former head of Los Angeles-based New World Motion Pictures Studios and associated with films like "Dr. Black, Mr. Hyde" -- notes that his Web site and literature specify that his group is "an independent committee."

"We don't speak for the campaign," he said.

Cash's group has raised cash with recent advertising pitches for events such as the Sept. 21 "Women of Power" Carnival cruise to Mexico -- which boasts star attendees like singer Eartha Kitt, poet Maya Angelou and Rep. Diane Watson, D-Los Angeles.

The legendary Kitt "will be interested to know that," Andrew Friedman, her longtime publicist, said wryly of the chanteuse's advertised cruise appearance. "She'll be performing at the Carlyle in New York during those dates."

Angelou, the celebrated author, might also be surprised by the invite: She's officially endorsed New York Sen. Hillary Rodham Clinton for president. And staffers in Watson's Washington office insisted that they know nothing of the trip -- and it isn't on the congresswoman's schedule.

Cash said his advertisements have noted that the celebrities are "due to availability."

But Erzell Hoffman, 65, of Compton said Tuesday she had put her hard-earned cash into a rare political donation to "Californians for Obama" -- \$2,423.76 to go on the Obama Women of Power cruise with the double goal of rubbing elbows with admired woman and helping her favorite presidential candidate.

Hoffman said she was heartbroken when The Chronicle informed her that her donation for passage on the three-day trip from Long Beach to Ensenada -- for which Carnival Cruise lines charges \$349 -- isn't benefiting Obama's campaign, something she insisted cruise organizers never told her.

"You're kidding me," said Hoffman, a divorced marriage and family counselor. "It seems to

me that's fraudulent. That's incredible. It's called Californians for Obama. ... I thought they were representatives of Obama."

In a 2008 presidential race that is both competitive and consumed with campaign fundraising, the existence of such unauthorized or independent fundraising organizations is not only a cautionary tale to campaigns but to donors as well, political veterans say.

The Federal Election Commission says that such independent fundraising groups have existed for decades and are entirely legal -- as long as they cannot be directly connected to campaigns or fraudulently suggest such a connection to gather donations.

But Obama spokesman Burton said the campaign believes that the efforts should cease because it appears to be "an unauthorized use of the senator's name to raise money. ... We want to make sure people are protected."

Democratic campaign strategist Garry South said such trouble underscores how, for a candidate like Obama -- who has been a formidable fundraiser on the Internet -- "there are a lot of advantages to the Internet and its use in politics, but there also is a nasty underbelly. This is an example."

"People can raise money any way they want, and there is not a hell of a lot that a campaign can do about it unless there's outright fraud," he said. "One of the reasons people are poaching on Obama is that he's a very hot candidate on the Internet."

But Democratic strategist Dan Newman, also unaffiliated with any presidential campaign, says the freewheeling efforts of Cash's group suggest concerns about Obama's official campaign organization in the nation's most populous state -- a fundraising mother lode. With an unauthorized group doing business since 2006, he said, the "strongly worded threats from attorneys" should have come sooner.

"Campaigns have to make it easy and accessible for supporters to get involved in their campaign officially, and they have to react strongly and clearly when something like this comes up," Newman said.

Ironically, Cash, the unofficial group's director, has hardly been shy about seeking publicity.

His colorful ventures -- reported in a variety of newspapers over the decades -- have included boasts in 2002 of establishing a new, Hollywood-style movie mecca in Jackson, Miss., and an official announcement in 2000 that his movie firm had signed a historic 12-film deal with the Chinese government.

Identified alternately as a boxing promoter, an Olympics boxer and the head of a minority contractor's association, Cash also was identified as director of a 1979 "Miss Black America" contest dominated by judges and dominated by contestants who complained of living conditions that included cockroaches and meals of salami sandwiches.

22 Gas \$75.00

MAY

3 Gas \$118.95

18 Gas \$100.00

JUNE

1 Gas \$304.40

22 Gas \$245.34

25 Gas \$169.67

TOTAL \$3,155.04

Source: Federal Election Commission

E-mail Carla Marinucci at cmarinucci@sfgchronicle.com.

This article appeared on page A - 1 of the San Francisco Chronicle

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(11)

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Attachment 2
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